IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.435 of 2007

Jamal .. Petitioner

Vs

1. State rep. by its Secretary to
   Government, Prohibition &
   Excise Department,
   Secretariat, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Egmore Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents to produce the detenu viz, Jamal, S/o. Hussain, who is now detained in Central Prison, Puzhal, Chennai-66 in pursuance of the order of the 2nd respondent on 9/2/2007 in Memo.No. 45/BDFGISSV/2007 and call for the records, set aside the order and set the detenue at liberty forthwith.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the detenu, Jamal, son of Hussain, who was incarcerated by order dated 9.2.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 9.2.2007 in his Office Memo No.45/BDFGISSV/2007 against the petitioner, Jamal, now confined at Central Prison, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

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2. The detenu had earlier come to adverse notice in ten cases of theft and robbery of various police stations in Chennai. On 21.01.2007, the detenu and his associates are alleged to have wrongfully restrained Dharanendran @ Pandian and is alleged to have threatened him at knife point and relieved him of Rs.500/-. When the detenu attempted to attacked the complainant with knife, the complainant warded off the attacked and is alleged to have sustained injury on his left hand. On the basis of the complaint, case was registered in Cr.No.41/2007 of R.4 Pondy Bazaar P.S. under Ss.341, 336, 307, 395, 397 and 506(2) IPC. The detenu was arrested on 21.01.2007 and was remanded to judicial custody. On being satisfied that the detenu has acted in a manner prejudicial to the maintenance of public order, the impugned detention order was clamped on him.

3. The learned Counsel for the petitioner though raised several points, we do not propose to go deep into those points, since in our view, the contention of the learned counsel as to non-application of mind must succeed. Drawing our attention to the booklet, learned Counsel for the petitioner has submitted that even though the FIR was earlier in point of time, wherein the accused persons are named, in the accident register, which is subsequent in point of time, the assailants are stated as 'unknown persons' and detaining authority has not chosen to clarify this discrepancy on vital aspect, which would vitiate the detention order.

4. With reference to the contention of the learned counsel for the petitioner, we have verified the records. By perusal of the affidavit, it is seen that FIR in Cr.No.41/2007 of R-4 Pondi Bazaar P.S. was registered on 21.01.2007 @ 2.30 p.m. By reading of FIR at page 159 of the booklet, it is seen that the names of the accused is mentioned in the FIR. The injured complainant Dharanendran @ Pandian was sent to the hospital for treatment along with police memo and he was examined in the hospital @ 3.15 p.m. on the same day i.e. 21.01.2007. By a reading of the Accident Register at page 184 of the booklet, it is seen that in the Accident Register, the injured has alleged that he was assaulted by five unknown persons using knife. Such discrepancy on the vital aspect is apparent on the face of the record. The Detaining Authority has not applied its mind to this discrepancy nor clarified on this aspect. Naming the accused persons is a vital aspect and in our view, the Detaining Authority ought to have clarified on the material contradiction in the FIR and Accident Register.

5. In similar facts and circumstances of the case, in 2005 MLJ Crl. 1069 [Sekar @ Karadi Sekar v. Commissioner of Police, Greater Chennai, Chennai], names of the accused was mentioned in the FIR. But in the Accident Register, mention is made about the assailants as "Two unknown persons". This Court has quashed the detention order on the ground that the discrepancy shows non application of mind by the Detaining Authority. The ratio of the said decision is squarely applicable to the case on hand.

6. It is also brought to our notice that this Court by order dated 16.8.2007 made in H.C.P.No.308 of 2007 had already quashed the order of detention pertaining to the co-accused.

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7. For the foregoing reasons, the Habeas Corpus Petition is allowed and the impugned detention order is quashed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Prohibition &
   Excise Department,
   Secretariat, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Egmore Chennai 8.

3. The Superintendent,
   Central Prison,
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Govt
Public (Law & Order) Department Fort St George, Chennai-9.

+ One cc to Mr. S. Swamidoss Manokaran, Advocate sR 52468

BS (co)
sg 4/9/07

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